

## Article - Estates and Trusts

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§17–113.

(a) Notwithstanding provisions in the power of attorney, an agent that has accepted appointment shall:

(1) Act in accordance with the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest;

(2) Act with care, competence, and diligence for the best interest of the principal; and

(3) Act only within the scope of authority granted in the power of attorney.

(b) Except as otherwise provided in the power of attorney, an agent that has accepted appointment shall:

(1) Act loyally for the principal's benefit;

(2) Act so as not to create a conflict of interest that impairs the agent's ability to act impartially in the principal's best interest;

(3) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(4) Cooperate with a person that has authority to make health–care decisions for the principal to carry out the principal's reasonable expectations to the extent actually known by the agent and, otherwise, act in the principal's best interest; and

(5) Attempt to preserve the principal's estate plan, to the extent actually known by the agent, if preserving the plan is consistent with the principal's best interest based on all relevant factors, including:

(i) The value and nature of the principal's property;

(ii) The principal's foreseeable obligations and need for maintenance;

(iii) The extent to which the principal's liability for taxes, including income, estate, inheritance, generation-skipping transfer, and gift taxes, can be minimized; and

(iv) The principal's eligibility for a benefit, a program, or assistance under a statute or regulation.

(c) An agent that acts as provided in this section is not liable to any beneficiary of the principal's estate plan for failure to preserve the plan.

(d) An agent that acts with care, competence, and diligence for the best interest of the principal is not liable solely because the agent also benefits from an act taken by the agent or has an individual or conflicting interest in relation to the property or affairs of the principal.

(e) If an agent is selected by the principal because of special skills or expertise possessed by the agent or in reliance on the agent's representation that the agent has special skills or expertise, the special skills or expertise must be considered in determining whether the agent has acted with care, competence, and diligence under the circumstances.

(f) Absent a breach of duty to the principal, an agent is not liable if the value of the principal's property declines.

(g) An agent that exercises authority to delegate to another person the authority granted by the principal or that engages another person on behalf of the principal is not liable for an act, error of judgment, or default of that person if the agent exercises care, competence, and diligence in selecting and monitoring the person.

(h) This section may not be construed to reduce any duty of an agent to the principal under existing State law.

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